

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Monique West	Team: Squad #2	CCRB Case #: 201604395	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Thursday, 05/19/2016 7:19 PM	Location of Incident: § 87(2)(b)	Precinct: 32	18 Mo. SOL 11/19/2017	EO SOL 11/19/2017	
Date/Time CV Reported Fri, 05/20/2016 6:05 PM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Fri, 05/20/2016 6:05 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Risel Martinez	22049	953063	032 PCT
2. SGT Sean Aman	03440	937975	032 PCT
3. LT Javad Valad	00000	937665	032 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Janielle Mendoza	08833	945429	032 PCT
2. POM Alexander Alignay	22459	952397	032 PCT
3. POM Jeffrey Gill	21040	958632	032 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Risel Martinez	Abuse: Police Officer Risel Martinez drew his gun.	
B.POM Risel Martinez	Abuse: Police Officer Risel Martinez threatened § 87(2)(b) with the use of force.	
C.POM Risel Martinez	Force: Police Officer Risel Martinez used physical force against § 87(2)(b)	

Officer(s)	Allegation	Investigator Recommendation
D.SGT Sean Aman	Force: Sergeant Sean Aman used physical force against § 87(2)(b)	
E.POM Risel Martinez	Force: Police Officer Risel Martinez used a chokehold against § 87(2)(b)	
F.POM Risel Martinez	Force: Police Officer Risel Martinez restricted the breathing of § 87(2)(b)	
G.POM Risel Martinez	Force: Police Officer Risel Martinez pointed his gun at individuals.	
H.POM Risel Martinez	Abuse: Police Officer Risel Martinez threatened individuals with the use of force.	
I.POM Risel Martinez	Discourtesy: Police Officer Risel Martinez spoke discourteously to individuals.	
J.POM Risel Martinez	Force: Police Officer Risel Martinez used physical force against § 87(2)(b)	
K.POM Risel Martinez	Abuse: Police Officer Risel Martinez arrested § 87(2)(b)	
L.LT Javad Valad	Discourtesy: Lieutenant Javad Valad spoke discourteously to individuals.	
M.POM Risel Martinez	Discourtesy: Police Officer Risel Martinez spoke discourteously to § 87(2)(b)	
§ 87(4-b), § 87(2)(g)		

Case Summary

On May 19, 2016, Lieutenant Javad Valad of the 32nd Precinct reported the following incident to the Internal Affairs Bureau (IAB), generating IAB log #16-17957 (Board Review 01). On May 20, 2016, § 87(2)(b) a non-witnessing complainant, filed the following complaint with the Civilian Complaint Review Board via the Call Processing System. On May 22, 2016, an unidentified individual, another non-witnessing complainant, filed this complaint with the CCRB via the CCRB website (Board Review 02).

On May 19, 2016, at approximately 7:19 p.m., Police Officer Risel Martinez and Sergeant Sean Aman of the 32nd Precinct arrived at § 87(2)(b) in Manhattan in pursuit of § 87(2)(b) (also referred to in various documents and reports as § 87(2)(b) and § 87(2)(b) who had evaded police earlier that day on a dirt bike and was being sought for reckless endangerment and an investigation involving a stolen vehicle containing bullets. When they arrived, Police Officer Martinez encountered § 87(2)(b) inside of the lobby. Police Officer Martinez drew his gun (**allegation A**) and allegedly threatened § 87(2)(b) with the use of force (**allegation B**). Upon gaining entry into the building, Sergeant Aman and Police Officer Martinez used physical force against § 87(2)(b) (**allegations C and D**). Police Officer Martinez allegedly used a chokehold against § 87(2)(b) (**allegation E**) and restricted his breathing (**allegation F**). Police Officer Martinez pointed his gun at individuals (**allegation G**) and allegedly stated, “Back up. I’m not playing. I will shoot.” (**allegation H**).

After § 87(2)(b) was detained, Lieutenant Javad Valad and Police Officer Jeffrey Gill of the 32nd Precinct arrived on scene. Police Officer Martinez exited the building and allegedly stated, “Get from the fucking door” (**allegation I**) before punching § 87(2)(b) (**allegation J**) and arresting him (**allegation K**). Lieutenant Valad ordered individuals to “Get the fuck back” (**allegation L**). Police Officer Martinez allegedly said to § 87(2)(b) “Now you can’t breathe motherfucker?” before picking him off of the floor and leaving the scene (**allegation M**). § 87(4-b), § 87(2)(g)

§ 87(2)(b) was arrested and charged with § 87(2)(b) (Board Review 03). § 87(2)(b) [§§ 86(1)(3)&(4)] [§ 87(2)(c)] § 87(2)(b) was arrested and charged with § 87(2)(a) 160.50 [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

§ 87(2)(g)

This case was placed on district attorney hold on June 21, 2016 at the request of the Manhattan District Attorney’s office. It was removed from district attorney hold on September 2, 2016. This prevented the CCRB from being able to complete its investigation within 90 days. § 87(2)(g)

The CCRB obtained several pieces of video footage from IAB, media reports, the management of the incident location, and various victims and witnesses. Copies of these video footages are inserted in the relevant portions of this report. The full videos are in IAs #2, 3, 8, 9, 23, 56, 57, 58, 65, 66, 83, 90, 92, 136, 177, and 198.

Mediation, Civil and Criminal Histories

- This case was unsuitable for mediation due to the arrest of § 87(2)(b) and his subsequent open criminal case.
- § 87(2)(b) has filed a Notice of Claim with the Comptroller's Office claiming false arrest, unlawful imprisonment, personal injuries and more and seeking an unspecified amount of payment (Board Review 09). § 87(2)(b) has filed a Notice of Claim with the Comptroller's Office claiming that he was illegally stopped, seized, searched, falsely detained, arrested, and more and seeking \$250,000 (Board Review 12).
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Civilian and Officer CCRB Histories

- § 87(2)(b) filed one prior CCRB complaint § 87(2)(b)
- This is the first CCRB complaint involving § 87(2)(b) and § 87(2)(b) (Board Review 06)
- Police Officer Martinez has been a member of the NYPD for four years and has had 13 prior CCRB allegations against him involving three cases with three substantiated allegations in one case § 87(4-b) § 87(2)(g). In CCRB case #201604293, which occurred two days prior to the incident date in this case, allegations that Police Officer Martinez searched a vehicle, frisked § 87(2)(b) and interfered with a recording device were substantiated and formalized training was recommended. The NYPD disposition has not yet been decided. § 87(2)(g)
- Sergeant Aman has been a member of the NYPD for 11 years and has had two prior CCRB allegations against him involving one case with one substantiated allegation and § 87(4-b) § 87(2)(g). In CCRB case #201604293, an allegation that Sergeant Aman searched a vehicle was substantiated and formalized training was recommended. The NYPD disposition has not yet been decided. § 87(2)(g)
- Lieutenant Valad has been a member of the NYPD for 11 years and has had 24 prior CCRB allegations against him involving 12 cases with no substantiated allegations. § 87(4-b) § 87(2)(g)

Potential Issues

- § 87(2)(b)'s civil attorney, § 87(2)(b) originally stated that he would not allow § 87(2)(b) to provide a statement to the CCRB due to his pending criminal charges. More than three months later, § 87(2)(b) sent an email stating that § 87(2)(b) was willing to cooperate and provide a statement. § 87(2)(b) later stated that after conferring with § 87(2)(b) who was out-of-state away at school, he would not be able to appear at the CCRB to provide a statement. § 87(2)(b) asked that in lieu of § 87(2)(b) providing a

- written statement, that his Notice of Claim be accepted. He stated that he would have § 87(2)(b) call to provide a phone statement. Multiple follow up calls were made to § 87(2)(b) however, § 87(2)(b) never called to provide a phone statement.
- § 87(2)(b)'s attorney, § 87(2)(b) stated that he spoke to § 87(2)(b) in regards to providing a statement to the CCRB but he was not interested in doing so.
 - § 87(2)(b) contacted the CCRB through an unknown number and provided a phone statement. He was unable to schedule an interview at the time and stated that it would be best to contact him via email because he did not have a phone number. Three emails and three letters were sent to § 87(2)(b). Calls were made to his sister, § 87(2)(b) who stated § 87(2)(b) did not live with her. Although she claimed that she did not know how the undersigned could get in contact with him, she stated that she was able to give him the undersigned's information and have § 87(2)(b) call. § 87(2)(b) never contacted the CCRB to schedule an in-person interview. Searches of various databases provided no additional contact information for § 87(2)(b).
 - The cameras in the lobby of the incident location were not working at the time of the incident.
 - On May 23, 2016, field team investigators went to the home of § 87(2)(b). An elderly woman, who identified herself as § 87(2)(b)'s grandmother, stated that she did not wish for § 87(2)(b) to be involved. She stated that he was not home at the time and refused to allow the investigators to leave a business card for him. Seven calls were made and three letters were sent to § 87(2)(b) however, he never contacted the CCRB.
 - Field team investigators encountered § 87(2)(b) outside of § 87(2)(b) on May 23, 2016. § 87(2)(b) stated that he had retained an attorney in regard to this case and therefore, did not wish to speak to the CCRB. He refused to provide his contact information or the identity of his attorney.
 - Video footage showed that a large number of civilians witnessed portions of this incident. Field work was conducted at the location on a number of occasions and the CCRB was able to obtain statements from several of these witnesses. There however remained several potential witnesses whom the investigation was unable to identify.

Findings and Recommendations

Allegations not pleaded

- § 87(2)(g)

Allegation A- Abuse of Authority: Police Officer Risel Martinez drew his gun.

Allegation B- Abuse of Authority: Police Officer Risel Martinez threatened § 87(2)(b) with the use of force.

On May 23, 2016, § 87(2)(b) and § 87(2)(b) were interviewed at § 87(2)(b) in Manhattan. On May 26, 2016, § 87(2)(b) was

interviewed at § 87(2)(b) in Manhattan. On June 1, 2016, § 87(2)(b) provided a phone statement to the CCRB. On June 9, 2016, § 87(2)(b) and § 87(2)(b) were interviewed at § 87(2)(b) in Manhattan. On July 6, 2016, § 87(2)(b) provided a phone statement to the CCRB. On June 23, 2016, Sergeant Aman was interviewed at the CCRB. On June 24, 2016, Lieutenant Valad and Police Officer Gill were interviewed at the CCRB. On July 8, 2016, Police Officer Janielle Mendoza and Police Officer Alex Alignay were interviewed at the CCRB. On October 14, Police Officer Martinez was interviewed at the CCRB.

It is undisputed that Police Officer Martinez drew his weapon inside the vestibule of § 87(2)(b).

§ 87(2)(b) stated that when he exited the elevator inside the lobby at § 87(2)(b), he had music playing through the headphones in his ears and was riding his hover board. At this time, he noticed § 87(2)(b) approaching the building door. § 87(2)(b) opened the lobby door for him. After § 87(2)(b) entered the lobby, § 87(2)(b) saw Police Officer Martinez and Sergeant Aman enter the vestibule, between the building's front door and the lobby door. At this point, he realized that they were pursuing § 87(2)(b). Police Officer Martinez yelled, "Open the door." § 87(2)(b) initially stated that Police Officer Martinez tapped the glass of the door with his gun and threatened to shoot through the glass if he did not open the door. He later stated that it was § 87(2)(b) who later informed him that Police Officer Martinez tapped on the door with his gun. He did not specify whether he heard Police Officer Martinez threaten to shoot through the glass if he did not open the door or whether § 87(2)(b) told him this as well. He stated that he did not hear much of anything due to the music he was listening to.

§ 87(2)(b) who had been standing in the vestibule, stated that Police Officer Martinez ordered him to open the door and he informed him that he could not because he did not have keys. Police Officer Martinez then told § 87(2)(b) to open the door. § 87(2)(b) put his hands up and appeared to be confused as to whether he should open the door. Police Officer Martinez took out his gun, pointed it at the glass window of the lobby, tapped it on the glass and said, "Open the door or I'll shoot." § 87(2)(b) backed up. He was not sure whether Police Officer Martinez was speaking to him or § 87(2)(b) because Police Officer Martinez initially looked at him and then back at § 87(2)(b).

As discussed above, § 87(2)(b) did not provide a statement to the CCRB.

Police Officer Martinez stated that Sergeant Aman arrived in the vestibule shortly after him. § 87(2)(b) was in the lobby with § 87(2)(b). Police Officer Martinez and Sergeant Aman told § 87(2)(b) to open the door. Their shields were displayed and they verbally identified themselves as police officers. § 87(2)(b) and spectators outside of the building told § 87(2)(b) not to open the "fucking" door. Police Officer Martinez initially denied drawing his gun at this point but then quickly changed his statement to say that he did not recall whether he drew his gun at that point. Police Officer Martinez denied threatening to shoot anyone if they did not open the door. He stated that he may have told § 87(2)(b) that he was going to be arrested for obstructing governmental administration if he did not open the door.

Sergeant Aman stated that Police Officer Martinez did not draw his gun during this time and did not threaten to shoot anyone.

Video footage from the vestibule of the building shows § 87(2)(b) run into the vestibule of the building and then into the lobby, before closing the door behind him. § 87(2)(b) is standing in the vestibule. Police Officer Martinez enters the vestibule and attempts to open the door without success. He knocks on the door and then removes his gun from its holster, without

raising it, while looking in the direction of the lobby. When Sergeant Aman enters the vestibule a couple of seconds later, Police Officer Martinez reholsters his gun. The video has no sound (see IA#259).



201604395_20161102_1700_DM.mp4

Police Officer Martinez acknowledged asking § 87(2)(b) to open the door while attempting to gain access to the lobby; however, he initially denied that he drew his gun during this time but then quickly stated that he did not recall whether he did. § 87(2)(g)

§ 87(2)(g)

Allegation C- Force: Police Officer Risel Martinez used physical force against § 87(2)(b)

Allegation D- Force: Sergeant Sean Aman used physical force against § 87(2)(b)

It is undisputed that Police Officer Martinez and Sergeant Aman punched § 87(2)(b) in the face and brought him to the ground, while attempting to apprehend him. It is also undisputed that prior to this, § 87(2)(b) grabbed § 87(2)(b) in attempt to keep him from opening the door.

§ 87(2)(b) stated that § 87(2)(b) in his attempt to get § 87(2)(b) to help him escape the officers, grabbed him, almost causing him to fall. § 87(2)(b) pushed § 87(2)(b) off of him and opened the door for the officers, who immediately entered the lobby. Police Officer Martinez then punched § 87(2)(b) once in his face, causing him to fall to the floor. Police Officer Martinez went down to the floor with him, grabbed him by his arm and twisted it behind his back.

Police Officer Martinez stated that § 87(2)(b) grabbed § 87(2)(b) by the throat in attempt to get him away from the door. When § 87(2)(b) opened the door, he and Sergeant Aman ordered § 87(2)(b) to the floor and then grabbed him by his upper body in attempt to bring him to the floor. § 87(2)(b) did not get down to the floor. Police Officer Martinez punched § 87(2)(b) approximately two or three times in his upper body or face to “soften” him up. § 87(2)(b) still did not get down to the floor. Police Officer Martinez did not know what Sergeant Aman was doing during this time.

Police Officer Martinez originally stated that they brought § 87(2)(b) to the floor and then he got him into a hold which he referred to as a “shoulder-wrist lock.” However, when later asked how § 87(2)(b) was brought to the floor, he stated that he got him in the “wrist lock” first and then the force of his body brought him to the floor. Police Officer Martinez described this hold as placing pressure on the shoulder and arm to prevent the individual from moving. He explained that the hold causes discomfort to the individual’s shoulder if they move. He stated that during this hold, both of his legs were on § 87(2)(b)’s lower back. § 87(2)(b) landed on top of Police Officer Martinez. § 87(2)(b) was actively moving his whole body any way he could, which Police Officer Martinez believed was in attempt to escape from custody.

Sergeant Aman stated that when § 87(2)(b) made a motion to open the door for them, § 87(2)(b) grabbed him, pulled him down and pushed him against the wall, dragging him away from the door. § 87(2)(b) was able to open the door as § 87(2)(b) dragged him. When § 87(2)(b) opened the door, Sergeant Aman entered the lobby first, followed by Police Officer Martinez. § 87(2)(b) who had his hands at chest level towards § 87(2)(b) turned his hands in the same stance towards Sergeant Aman. Sergeant Aman did not recall whether his hands were open or in fists but he was directly in front of him. Sergeant Aman perceived this as a fighting stance and feared that § 87(2)(b) was going to hit him. Sergeant Aman struck § 87(2)(b) in the face, grabbed him around his chest area and brought him down to the floor, in one motion. He did not recall whether he struck § 87(2)(b) with an open hand or closed fist. Sergeant Aman believed that he struck § 87(2)(b) only once but he was not sure. Police Officer Martinez did not assist him until § 87(2)(b) was on the floor.

There is no video footage that clearly captures the actions of the officers and § 87(2)(b) immediately after they entered the lobby to restrain him.

Patrol Guide Procedure 221.01 states that force may be used when it is reasonable to ensure the safety of a member of the service or a third person, or otherwise protect life, or when it is reasonable to place a person in custody or to prevent escape from custody. In all circumstances, any application or use of force must be reasonable under the circumstances. (Board Review 07).

§ 87(2)(g)
[REDACTED]

Allegation E- Force: Police Officer Risel Martinez used a chokehold against § 87(2)(b)

Allegation F- Force: Police Officer Risel Martinez restricted the breathing of § 87(2)(b)

Video footage captured by § 87(2)(b) shows § 87(2)(b) on his knees, leaning over with his head faced toward the floor. Police Officer Martinez, who is lying on his right side, positions himself so that § 87(2)(b)'s head is between his legs, with one leg on his upper back and one leg on his upper chest area. Police Officer Martinez appears to push his legs together to keep § 87(2)(b) in this grip. At the same time, he is holding § 87(2)(b)'s arm, with two hands, behind his back. During this time, § 87(2)(b) screams, "I can't breathe." Police Officer Martinez kept § 87(2)(b) in this hold for a total of 18 seconds after he stated that he could not breathe before addressing the crowd. He had him in that hold for a total of 37 seconds. It is unclear from the video whether Police Officer Martinez's legs made contact with § 87(2)(b)'s neck or throat (see IA#261).



201604395_20161103_1620_DM.mp4

Police Officer Martinez stated that his legs were never on § 87(2)(b)'s chest area and he did not recall his legs or arms coming in contact with § 87(2)(b)'s neck or throat. As discussed above, Police Officer Martinez described the hold that he used against § 87(2)(b) as a "shoulder-wrist lock" in which he placed pressure on § 87(2)(b)'s shoulder and arm to prevent him from moving. He stated that during this hold, both of his legs were on § 87(2)(b)'s lower back. Police Officer Martinez recalled hearing § 87(2)(b) say that he could not breathe but denied that he or Sergeant Aman were doing anything at that time that could have restricted his breathing or that there was any pressure on his throat during this time. Neither Police Officer Martinez nor Sergeant Aman changed their position after hearing § 87(2)(b) state that he could not breathe because nothing they were doing was restricting his breathing.

Patrol Guide Procedure 221-01 states that an officer must not use a chokehold. A chokehold shall include, but is not limited to, any pressure to the throat or windpipe, which may prevent or hinder breathing or reduce intake of air.

§ 87(2)(g)

§ 87(2)(g)

Allegation G- Force: Police Officer Risel Martinez pointed his gun at individuals.

Allegation H- Abuse of Authority: Police Officer Risel Martinez threatened individuals with the use of force.

It is undisputed that a crowd gathered in front of Police Officer Martinez and Sergeant Aman while they were attempting to handcuff § 87(2)(b) and that Police Officer Martinez pointed his gun while ordering the crowd to back up.

§ 87(2)(b) alleged that after Police Officer Martinez pointed his gun at the crowd, he said, "Back up. Back up. I'm not playing. I will shoot."

Police Officer Martinez stated that prior to pointing his gun, individuals in the crowd were saying, "Fuck cops. Fuck you niggers. You're not shit. You're not tougher than your shield. Let's get these niggers." At the time he noticed the crowd, they were approximately five feet away from him and they continued to move forward. He became afraid. Police Officer Martinez told Sergeant Aman to call for additional units while he made sure that the crowd did not move forward. Sergeant Aman fixed his radio and called for additional units while Police Officer Martinez ordered the crowd to back up three times. Police Officer Martinez stated that the closer

the crowd got, the more he feared for his life. When they were approximately four to five feet away from him, he pointed his gun at the crowd and told them multiple times to back up. They did not immediately comply but the last time he gave them the command to back up with his gun drawn, they complied and exited the lobby. He stated that he told them to back up approximately six times before they complied. Police Officer Martinez did not recall threatening to shoot § 87(2)(b) at any time during the incident.

Sergeant Aman stated that prior to Police Officer Martinez pointing his gun, multiple individuals in the crowd had been threatening to kill them and he did not know if anyone in the crowd had weapons. Sergeant Aman stated that he never drew his gun because his hands were full with § 87(2)(b).

Video footage captured by § 87(2)(b) shows Police Officer tell the crowd first in a normal tone to back up. He then screams, "Back up." § 87(2)(b) appears to take a step back. No other members of the crowd can be seen in the video. A couple of people in the crowd can be heard screaming and cursing at the officers saying, "Ya'll niggers are bugging the fuck out" and "You punched him on camera." No one is heard making any threats towards the officers. One male in the crowd says, "Get your workout. That's what you're supposed to do you bum ass nigger." At this moment, Police Officer Martinez draws his gun and screams, "Back up. Back up. I'm not playing. Back up." § 87(2)(b) and the crowd immediately back up, making their way out the lobby door. Police Officer Martinez continues to scream, "Get out. Back up" with his gun pointed. The crowd screams for him to "shoot." § 87(2)(b) screams, "Suck my dick pussy." Police Officer Martinez stands and walks towards the crowd with his gun pointed saying, "I'm not playing" causing the crowd to run out of the building. Police Officer Martinez is not heard verbally threatening to shoot anyone during this portion of the incident (see IA #262).



201604395_20161103_1733_DM.mp4

An officer may draw and point a firearm as long as the officer has a reasonable fear for his own or another's personal safety. Police Department v. Gliner, OATH Index No. 955/00 (Sept. 6, 2000) (Board Review 07).

The video captures 20 seconds prior to Police Officer Martinez drawing his gun. During this time, none of the individuals in the crowd are heard threatening the officers. There are multiple videos of the incident and none of them capture any members of the crowd making threatening statements to the officers. § 87(2)(g)

Police Officer Martinez described the crowd continuing to approach him causing his fear for his safety to increase; however, when asked their distance when he first observed them and then their distance immediately prior to his pointing his gun, he provided the same distance. Video footage also does not show any members of the crowd get any closer to the officers during the apprehension of § 87(2)(b).

The video captures Police Officer Martinez reacting each time § 87(2)(b) in the crowd insults him. The first time when § 87(2)(b) called him a "bum ass nigger," he drew his gun and later when § 87(2)(b) said, "Suck my dick pussy" he stood with his gun still drawn and proceeded to approach the crowd.

§ 87(2)(g)

Allegation I- Discourtesy: Police Officer Risel Martinez spoke discourteously to individuals.

Allegation J- Force: Police Officer Risel Martinez used physical force against § 87(2)(b)

Allegation K- Abuse of Authority: Police Officer Risel Martinez arrested § 87(2)(b)

It is undisputed that Police Officer Martinez punched and arrested § 87(2)(b). § 87(2)(b) alleged that when Police Officer Martinez exited the building, he said, “Get from the fucking door.” She did not see Police Officer Martinez punch § 87(2)(b).

Police Officer Martinez stated that as he exited the building, he saw “something” coming towards the left side of his face at eye level that appeared to be seconds away from hitting his face. He could not describe what he saw coming towards him but stated that, at the time he saw it, he registered it as him about to be punched in the face. He stated that seeing “something” in close proximity to his face (which he indicated with his hand up against the side of his face) is what led him to believe that he was about to be punched. In response, Police Officer Martinez punched § 87(2)(b) on the left side of his face.

After he punched § 87(2)(b) he recognized him as one of the individuals in the crowd and decided that he was going to be placed under arrest for disorderly conduct- refusing to disperse, inciting a riot and threatening a police officer. Police Officer Martinez did not recall what, if anything, § 87(2)(b) had been doing in the lobby, where he was in the lobby or at what point during the incident he remembered his face from. He only recognized his face as someone who had been in the lobby in the crowd at some point. Police Officer Martinez stated that § 87(2)(b) received those charges because he was part of the “angry” mob. Police Officer Martinez stated that it was not until after he watched the video footage on the news that he realized that the object he saw close to his face was a phone.

The UF-61 prepared by Police Officer Mendoza, § 87(2)(b) s arresting officer, stated that he was informed by Police Officer Martinez that while attempting to apprehend § 87(2)(b), § 87(2)(b) and other unapprehended individuals got close to Police Officer Martinez’s zone of safety and stated in substance, “Wait til I see you. I’m gonna kill you. This is our neighborhood. We’re gonna fuck you up.” The UF-61 further noted that Police Officer Martinez told § 87(2)(b) multiple times to step back (Board Review 08).

Police Officer Martinez stated that he recalled having this discussion with Police Officer Mendoza but at the time of this discussion, he was not sure which individuals made the comments mentioned in the UF-61.

Video footage captured by the building’s security cameras and § 87(2)(b) show Police Officer Martinez exit the building. Police Officer Martinez does not say anything when exiting the building. § 87(2)(b) is standing next to a fence with his left hand in his pocket and his right hand holding his phone close to his body, recording the incident. Police Officer Martinez begins walking straight out of the building until he suddenly turns toward § 87(2)(b) with his

right hand in a fist. § 87(2)(b) had not moved from his position. His left hand remained in his pocket and his right hand remained close to his body, approximately three feet away from Police Officer Martinez. Police Officer Martinez proceeds towards § 87(2)(b) and punches him in the face. Police Officer Martinez pulls § 87(2)(b) to the ground and, with assistance from Lieutenant Valad and Police Officer Gill, handcuffs him (see IAs #177, 264, 268, and 271).



201604395_20161104_1128_DM.mp4



201604395_20161104_1209A_DM.mp4



201604395_20160609_1811_DM.mp4



201604395_20161107_1131_DM.mp4

Patrol Guide Procedure 221.01 states that force may be used when it is reasonable to ensure the safety of a member of the service or a third person, or otherwise protect life, or when it is reasonable to place a person in custody or to prevent escape from custody. In all circumstances, any application or use of force must be reasonable under the circumstances (Board Review 07). An individual's mere presence in the company of other persons when the police have justification to stop or probable cause to arrest does not create a justification to stop or arrest that individual. People v. McLoyd, 946 N.Y.S.2d 829 (2012) (Board Review 12).

§ 87(2)(g)
There was nothing near Police Officer Martinez's face at the time he turned to punch § 87(2)(b). § 87(2)(b) was approximately three feet away from him and his phone was held close to his body. § 87(2)(g)

Police Officer Martinez acknowledged that he did not know if § 87(2)(b) was one of the individuals who threatened him. He was unable to identify where § 87(2)(b) was in the lobby, at what point during the incident he was in the lobby or what he was doing in the lobby. § 87(2)(g)

§ 87(2)(g)
§ 87(2)(g)

Allegation L- Discourtesy: Lieutenant Javad Valad spoke discourteously to individuals.

It is undisputed that Lieutenant Valad ordered individuals twice to "Get the fuck back." It is also undisputed that there were dozens of individuals on scene at the time.

Lieutenant Valad stated that after § 87(2)(b) was in handcuffs, the crowd of approximately 100 people continued to approach them in a manner that caused him to fear for his safety. He ordered them to “get back” but they did not comply. He then ordered them twice to “Get the fuck back.” Lieutenant Valad stated that he did not recall saying this at the time of the incident but had later watched a video in which he heard himself say this. The crowd still did not comply after he made this command.

Lieutenant Valad described the large group making statements such as “You can’t do that” and making “other threats.” Some members of the crowd came within arms’ length of them as they were arresting § 87(2)(b). Lieutenant Valad initially stated that the crowd had been running towards him. When questioned as to whether they were walking or running, he stated that they were “walking but in an aggressive manner.” He described their “aggressive manner” as walking at a fast rate of speed, their demeanor, the looks on their faces and the way they were yelling at them. He could not recall what they were yelling but stated that it was “not good stuff.” He explained that there was a lot of background noise from the sirens and people yelling that he was unable to hear anything specific. He later continued to use the word “running” when describing the way the crowd was approaching them. He later clarified that the first set of people who were closest to them were not running but there were other people further away who were running in their direction. He did not recall whether he heard anyone make any specific threatening statements after he left the building.

Officers may use limited profanity during stressful encounters where there is a need to gain compliance or maintain control of an incident. NYPD v. Court, OATH Index 78667/03 (Board Review 07).

§ 87(2)(g)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

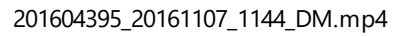
[REDACTED]

Allegation M- Discourtesy: Police Officer Risel Martinez spoke discourteously to § 87(2)(b)

[REDACTED]

§ 87(2)(b) stated that he had been watching the incident in the lobby on the monitor from the security office. When he went into the lobby, § 87(2)(b) was on the floor in handcuffs and stated that he could not breathe. Police Officer Martinez allegedly stated, “Now you can’t breathe motherfucker” and then the officers picked up § 87(2)(b) and left the building.

Video footage shows that once Police Officer Martinez exited the building, he did not re-enter. Police Officer Martinez was standing outside when § 87(2)(b) was escorted outside by other officers (see IA #272).



§ 87(2)(g), § 87(4-b)

Reviewer: _____
 Title/Signature Print Date